IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 594 of 1983

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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REGIONAL DIRECTOR & 1 - Appellant(s)
Versus
M/S. JOSHI FORMULABS PVT. LTD. - Defendant(s)

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Appearance :
FRESH NOTICE REQD(R) for Appellant(s) : 1,
MR BAIJU JOSHI for MR.SHIRISH JOSHI for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 21/08/2006

ORAL JUDGMENT

1. By way of this appeal the appellant has challenged the judgement and award dated 28.03.1982 passed by the Employees' Insurance Court, Ahmedabad in Application E.S.I. No. 73 of 1974.

2. The case of the original applicant is that it is a private limited company registered under the Indian Companies Act and functions at Rajkot manufacturing ball pen inks and refills. According to original applicant it is not a factory as defined under

Section 2(12) of the act and so it is not covered under the Act and the Act does not apply to it and as such it is not liable to pay any contribution under the Act to the original opponent No. 1, that it employees less than 20 employs and the original opponent No. 1 by its letter dated 17.07.1970 directed to the original applicant to submit a declaration in form 01. The original applicant was replied that it is not a factory as defined under the Act. 03.04.1987. Ultimately the authority held that the applicant's factory is covered under the Act and recovery proceedings were started. Hence, the aforesaid application came to be filed which came to be allowed.

3. Learned advocate for the present appellant has submitted that the trial court erred in holding that the respondent proved that it was not a factory as defined in Section 2(12) of the Act and that it was not covered by the provisions of the Employees State Insurance Act, 1948. He further submitted that the trial court ought to have appreciated that as per the report submitted by the Insurance Inspector on

19.06.1973 it was found that the factory of the respondent employed 22 persons with effect from 1st March 1972 and since the respondent factory employed more than twenty persons, it was covered by the provisions of the Act.

4. I have gone through the judgement and award of the Tribunal. While passing the order the Tribunal has found that the number of persons employed during the relevant period 18 if 2 directors and watchman and Raghobhai were excluded. Thus it is not proved that the original applicant had employed during the relevant period 20 or more persons. The applicant has by evidence shown that the persons sought to be included being signatory to the vouchers, were in fact not the employees or persons employed in the factory. In view of the above, the original applicant cannot be held to be factory as defined under Section 2(12) of the Act. In that view of the matter I am of the opinion that if the original applicant is not a factory under the Act, it will not fall within the purview of the Act and so the original opponent No. 1 cannot be entitled to claim

contributions from the original applicant.

5. Learned Counsel for the appellant is not able to point out anything contrary to take a different view of the matter.

6. In view of the above finding I am of the view that the Trial Court has not committed any error in passing the impugned order. I am in complete agreement with the reasonings adopted and the findings arrived at by the trial court. No case is made out to cause interference. Hence the appeal is dismissed. No order as to costs.

(K.S.JHAVERI, J.)

Suresh*